City of Bellevue
Development Services Department
Land Use Staff Report

Proposal Name:	Cougar Ridge Estate
Proposal Address:	16589 SE Cougar Mountain Way
Proposal Description:	Critical Areas Land Use Permit to modify a steep slope toe of slope setback; and remove trees and vegetation within category III wetland and type O stream structure setbacks for the construction of a single family residence. Includes a mitigation plan with planting of native vegetation and removal of invasive species within a wetland and buffer.
File Number:	16-142789-LO
Applicant:	Vadim Scherbinin, Apex Elite Homes
Decisions Included	Critical Areas Land Use Permit (Process II. 20.30P)
Planner:	Drew Folsom, Land Use Planner
State Environmental Policy Act Threshold Determination:	**Exempt**
Director's Decision:	**Approval with Conditions** Michael A. Brennan, Director Development Services Department By: _____ Carol V. Helland, Land Use Director

Application Date:	October 4, 2016
Notice of Application Date:	November 17, 2016
Renotice of Application Date:	December 8, 2016
Decision Publication Date:	February 2, 2017
Project/SEPA Appeal Deadline:	February 16, 2017

For information on how to appeal a proposal, visit Development Services Center at City Hall or call (425) 452-6800. Comments on State Environmental Policy Act (SEPA) Determinations can be made with or without appealing the proposal within the noted comment period for a SEPA Determination. Appeal of the Decision must be received in the City's Clerk's Office by 5 PM on the date noted for appeal of the decision.

CONTENTS

Attachments

1. Mitigation Plan – Enclosed
2. Critical Areas Report by The Watershed Company. – In File

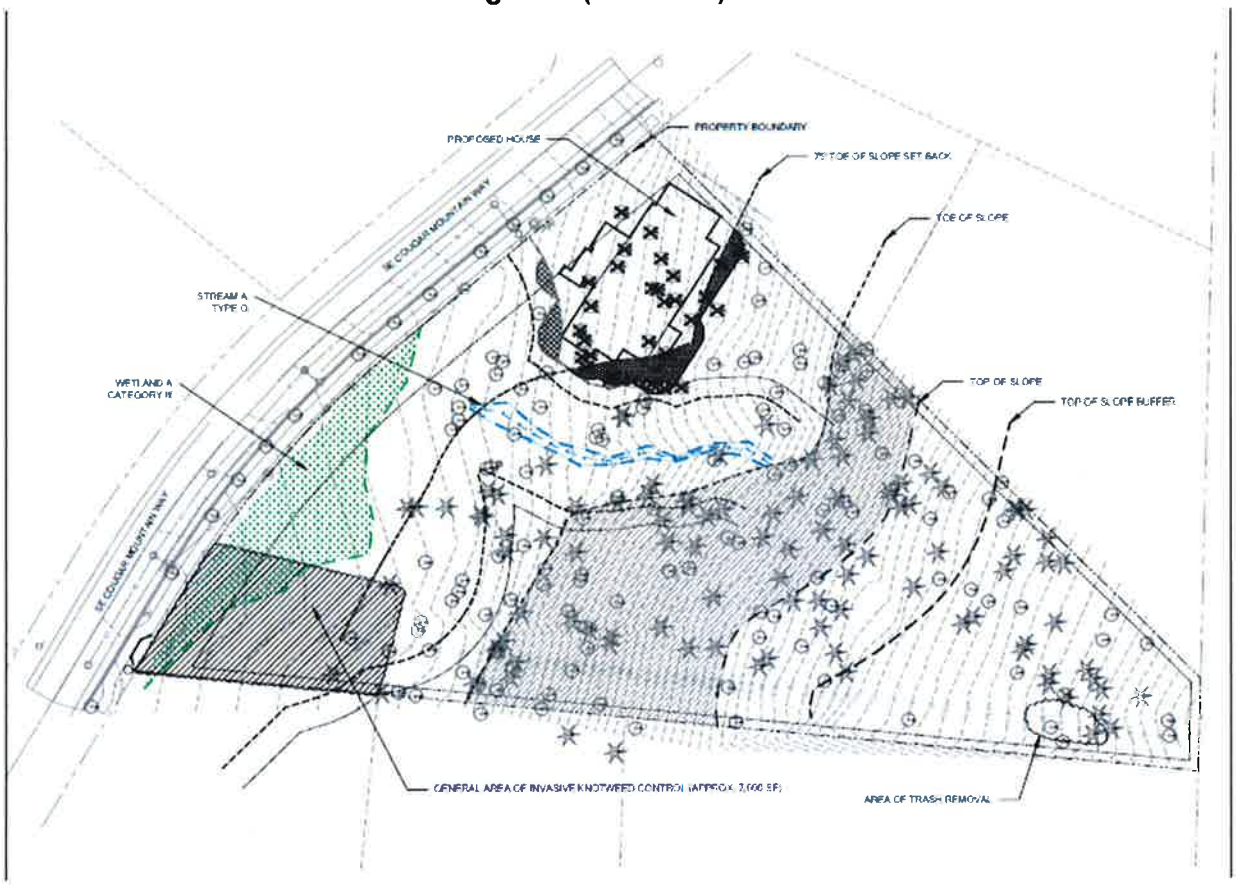
I. Proposal Description

The applicant proposes to build a single family residence on the site located at 16589 SE Cougar Mountain Way. To minimize disturbance of critical areas, buffer, or structure setbacks the front setback will be reduced from 35 feet to 25 feet as required per LUC 20.25H.040B.

The proposal includes a critical areas report with a request to reduce a steep slope critical area structure setback from 75 feet to 55 feet. Minor clearing and grading impacts associated with temporary construction impacts are proposed within category III wetland and type O stream structure setbacks. These areas of temporary disturbance will be replanted with native trees and shrubs. The proposal includes a mitigation and restoration plan to remove invasive species within the wetland and replace with native vegetation. As part of the mitigation plan, 7,600 square feet of invasive knotweed will be removed from the wetland and buffer and the area will be replanted with native vegetation. The mitigation will also include the planting of 1,184 square feet of native vegetation within the slope, stream, and wetland structure setbacks.

A Critical Areas Land Use Permit (CALUP) is required to modify steep slope structure setbacks and for temporary impacts to the stream and wetland structure setbacks. The project is exempt from SEPA review per BCC 22.02.032D.1 and 2.

Figure 1 (Site Plan)



II. Site Description, Zoning, Land Use and Critical Areas

A. Site Description

The project site is located in a community of single family homes in the Newcastle Subarea of the City. and is currently undeveloped. Access to the site is gained via SE Cougar Mountain Way. The site contains significant vegetative cover consisting of mature big leaf maples, Douglas firs, and Western red cedars. The understory is dominated by vine maple, Indian plum, and snowberry. The ground cover is predominately sword fern, Cascade Oregon Grape, and Robert's geranium. The topography of the sight slopes steeply from south to north. The mid portion of the site meets the definition of steep slopes under LUC 20.25H (shown in Figure 2 below). An aerial photograph of the site is included as figure 3. A type O stream flows from the base of the steep slope. A category III wetland is located in the Northwest portion of the site.

Figure 2 (Steep Slope, Stream, and Wetland)

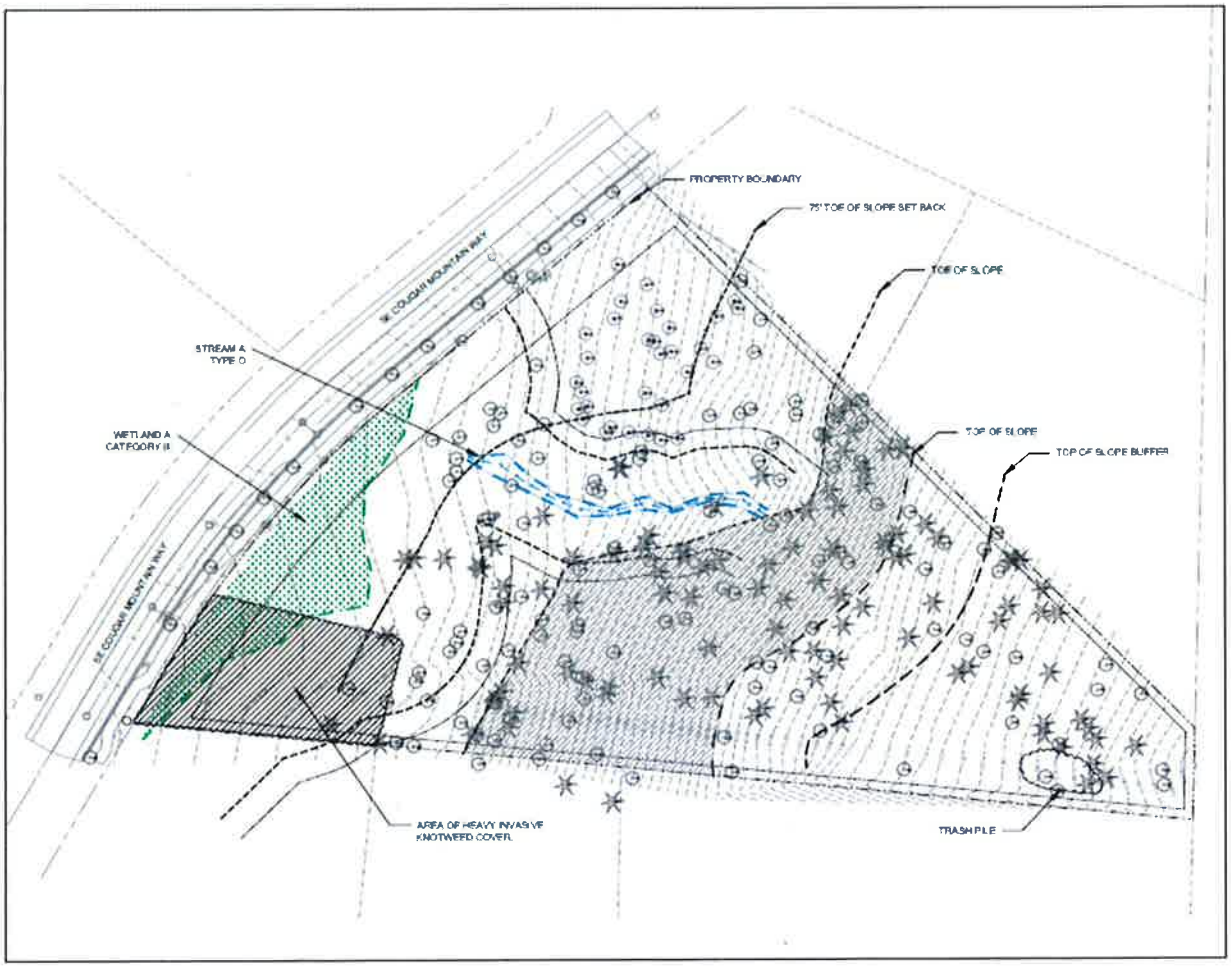


Figure 3 (Aerial Photograph)

B. Zoning

The property and surrounding properties are zoned R-1, single-family residential. The proposed work is permitted in this zoning district.

C. Land Use Context

The property has a Comprehensive Plan Land Use Designation of SF-Low (Single-Family Low Density) and the subject site and surrounding properties are developed with single family homes. The proposed project is consistent with this designation.

D. Critical Areas Functions and Values

i. Streams and Riparian Areas

Most of the elements necessary for a healthy aquatic environment rely on processes sustained by dynamic interaction between the stream and the adjacent riparian area (Naiman et al., 1992). Riparian vegetation in floodplains and along stream banks provides a buffer to help mitigate the impacts of urbanization (Finkenbine et al., 2000 *in* Bolton and Shellberg, 2001). Riparian areas support healthy stream conditions.

Riparian vegetation, particularly forested riparian areas, affect water temperature by providing shade to reduce solar exposure and regulate high ambient air temperatures,

slowing or preventing increases in water temperature (Brazier and Brown, 1973; Corbett and Lynch, 1985).

Upland and wetland riparian areas retain sediments, nutrients, pesticides, pathogens, and other pollutants that may be present in runoff, protecting water quality in streams (Ecology, 2001; City of Portland 2001). The roots of riparian plants also hold soil and prevent erosion and sedimentation that may affect spawning success or other behaviors, such as feeding.

Both upland and wetland riparian areas reduce the effects of flood flows. Riparian areas and wetlands reduce and desynchronize peak crests and flow rates of floods (Novitzki, 1979; Verry and Boelter, 1979 *in* Mitsch and Gosselink, 1993). Upland and wetland areas can infiltrate floodflows, which in turn, are released to the stream as baseflow

Stream riparian areas, or buffers, can be a significant factor in determining the quality of wildlife habitat. For example, buffers comprised of native vegetation with multi-canopy structure, snags, and down logs provide habitat for the greatest range of wildlife species (McMillan, 2000). Vegetated riparian areas also provide a source of large woody debris that helps create and maintain diverse in-stream habitat, as well as create woody debris jams that store sediments and moderate flood velocities.

Sparsely vegetated or vegetated buffers with non-native species may not perform the needed functions of stream buffers. In cases where the buffer is not well vegetated, it is necessary to either increase the buffer width or require that the standard buffer width be restored or revegetated (May 2003). Until the newly planted buffer is established the near term goals for buffer functions may not be attained.

Riparian areas often have shallow groundwater tables, as well as areas where groundwater and surface waters interact. Groundwater flows out of riparian wetlands, seeps, and springs to support stream baseflows. Surface water that flows in to riparian areas during floods or as direct precipitation infiltrates into groundwater in riparian areas and is stored for later discharge to the stream (Ecology, 2001; City of Portland, 2001).

ii. Wetlands

Wetlands provide important functions and values for both the human and biological environment—these functions include flood control, water quality improvement, and nutrient production. These "functions and values" to both the environment and the citizens of Bellevue depend on their size and location within a basin, as well as their diversity and quality. While Bellevue's wetlands provides various beneficial functions, not all wetlands perform all functions, nor do they perform all functions equally well (Novitski et al., 1995). However, the combined effect of functional processes of wetlands within basins provides benefits to both natural and human environments. For example, wetlands provide significant stormwater control, even if they are degraded and comprise only a small percentage of area within a basin.

iii. Geologic Hazard Areas

Geologic hazards pose a threat to the health and safety of citizens when commercial, residential, or industrial development is inappropriately sited in areas of significant hazard. Some geologic hazards can be reduced or mitigated by engineering, design, or modified construction practices. When technology cannot reduce risks to

acceptable levels, building in geologically hazardous areas is best avoided (WAC 365-190).

Steep slopes may serve several other functions and possess other values for the City and its residents. Several of Bellevue's remaining large blocks of forest are located in steep slope areas, providing habitat for a variety of wildlife species and important linkages between habitat areas in the City. These steep slope areas also act as conduits for groundwater, which drains from hillsides to provide a water source for the City's wetlands and stream systems. Vegetated steep slopes also provide a visual amenity in the City, providing a "green" backdrop for urbanized areas enhancing property values and buffering urban development.

iv. **Habitat** Associated with Species of Local Important LUC 20.25H.150.A
Urbanization, the increase in human settlement density and associated intensification of land use, has a profound and lasting effect on the natural environment and wildlife habitat (McKinney 2002, Blair 2004, Marzluff 2005, Munns 2006), is a major cause of native species local extinctions (Czech et al 2000), and is likely to become the primary cause of extinctions in the coming century (Marzluff et al 2001a). Cities are typically located along rivers, on coastlines, or near large bodies of water. The associated floodplains and riparian systems make up a relatively small percentage of land cover in the western United States, yet they provide habitat for rich wildlife communities (Knopf et al. 1988), which in turn provide a source for urban habitat patches or reserves. Consequently, urban areas can support rich wildlife communities. In fact, species richness peaks for some groups, including songbirds, at an intermediate level of development (Blair 1999, Marzluff 2005). Protected wild areas alone cannot be depended on to conserve wildlife species. Impacts from catastrophic events, environmental changes, and evolutionary processes (genetic drift, inbreeding, colonization) can be magnified when a taxonomic group or unit is confined to a specific area, and no one area or group of areas is likely to support the biological processes necessary to maintain biodiversity over a range of geographic scales (Shaughnessy and O'Neil 2001). As well, typological approaches to taxonomy or the use of indicators present the risk that evolutionary potential will be lost when depending on reserves for preservation (Rojas 2007). Urban habitat is a vital link in the process of wildlife conservation in the U.S.

III. Consistency with Land Use Code Requirements:

A. Zoning District Dimensional Requirements:

The R-1 zoning dimensional requirements found in LUC 20.20.010 apply to the proposed home construction. The front setback will be reduced from 35 feet to 25 feet per LUC 20.25H.040B. Based on the plans and information submitted the structural lot coverage will be approximately 8 percent and the impervious surface coverage will be approximately 7.1 percent. The plans submitted generally demonstrate conformance with zoning dimensional standards, however conformance will be verified during building permit review. **See Conditions of Approval in Section X of this report.**

B. Critical Areas Requirements LUC 20.25H:

The City of Bellevue Land Use Code Critical Areas Overlay District (LUC 20.25H) establishes performance standards and procedures that apply to development on any site which contains in whole or in part any portion designated as critical area, critical area buffer, or structure setback from a critical area or buffer.

i. Consitency with LUC 20.25H.080 (Streams Performance Standards)

These performance standards are not applicable. The site does not contain a type S or F stream or associated critical area buffers.

ii. Consistency with LUC 20.25H.100 (Wetlands)

Development on sites with a wetland or wetland critical area buffer shall incorporate the following performance standards in design of the development, as applicable:

A. Lights shall be directed away from the wetland.

B. Activity that generates noise such as parking lots, generators, and residential uses, shall be located away from the wetland, or any noise shall be minimized through use of design and insulation techniques.

C. Toxic runoff from new impervious area shall be routed away from the wetlands.

D. Treated water may be allowed to enter the wetland critical area buffer.

E. The outer edge of the wetland critical area buffer shall be planted with dense vegetation to limit pet or human use.

F. Use of pesticides, insecticides and fertilizers within 150 feet of the edge of the stream buffer shall be in accordance with the City of Bellevue's "Environmental Best Management Practices," now or as hereafter amended.

The above performance standards are incorporated into the project as found in the submitted critical areas report which is Attachment 2 of this staff report. As discussed in the critical areas report, the house and associated driveway will be located outside of any wetland, wetland buffer, or wetland structure setback. The house location and orientation will minimize any noise, light being directed towards the wetland. Storm water and impervious surface runoff are directed to Cougar Mountain Way. The proposed mitigation within the structure setback and the existing native trees and shrubs within the wetland buffer will limit pet or human use. The proposal will limit the use of herbicides, pesticides and/or fertilizers and will be in accordance with the City's "Environmental Best Management Practices".

iii. Consistency With LUC 125 (Performance standards for landslide hazards and steep slopes)

The applicant is not proposing any development or construction within the critical area or critical area buffer from the steep slope. The applicant's geotechnical engineer has evaluated the slope and site conditions as discussed in the geotechnical report dated September 9, 2015, prepared by Leroy Surveyors & Engineers, Inc. The report concluded that the structure can safely be located within 55 feet of the toe of the steep slope without risk. The report provided recommendations regarding site preparation, subgrade

compaction, footings, slab-on-grade floors, drainage systems, and use of structural fill. No modification to the slope or top of slope buffer is proposed or allowed as part of this permit.

See Conditions of Approval in Section X of this report.

IV. Public Notice and Comment

Application Date:	October 4, 2016
Public Notice (500 feet):	November 17, 2016,
Renoticed	December 8, 2016
Minimum Comment Period:	December 22, 2015

The Notice of Application for this project was published the City of Bellevue Weekly Permit Bulletin on November 17, 2016. It was renoticed on December 8, 2016. It was mailed to property owners within 500 feet of the project site. No comments were received.

V. Summary of Technical Reviews

A. Clearing and Grading

The Clearing and Grading Division of the Development Services Department has reviewed the proposed site development for compliance with Clearing and Grading codes and standards. The Clearing and Grading staff found no issues with the proposed development and has approved the application. The submittal of a single family building permit is required and must comply with Clearing and Grading best management practices and standards and codes.

B. Utilities

The Utilities Department has reviewed and approved the proposed site development for conceptual design. Associated single family building permit (16-127314-BS) must comply with the Utility Surface Water Engineering Standards and codes.

See Conditions of Approval in Section X of this report.

VI. State Environmental Policy Act (SEPA)

The proposal is categorically exempt from SEPA review per WAC 197-11-800 and BCC 22.02.032.D 1 and 2.

VII. Changes to Proposal Due to Staff Review

Staff required the house location to be located further north on the site to minimize disturbance of the steep slope structure setbacks.

VIII. Decision Criteria

A. 20.25H.255. Decision Criteria –Critical Areas Report.

The Director may approve, or approve with modifications, the proposed modification where the applicant demonstrates:

1. **The modifications and performance standards included in the proposal lead to levels of protection of critical area functions and values at least as protective as application of the regulations and standards of this code;**

   Finding: As described within the Critical Areas Report prepared by the Watershed Company, the project proposes to develop a single family residence and access driveway. The development will modify steep slope structure setback; and disturb wetland and stream structure setbacks. Included in the proposal is an enhancement plan to remove invasive species within the wetland and replant disturbed areas with native vegetation. As a result of the proposed mitigation plan the property will gain an increase in structural and biological diversity in the form of additional plantings which increase remaining habitat value and water quality functions. The project will result in an increase in ecological value to the property over what is existing. **See Conditions of Approval in Section X of this report.**

2. **The Adequate resources to ensure completion of any required mitigation and monitoring efforts;**

   Finding: Per LUC 20.25H.220 a maintenance assurance device is required in compliance with LUC Section 20.40.490 to ensure completion of the five-year monitoring period of the mitigation plan submitted in the critical areas report. **See Conditions of Approval in Section X of this report.**

3. **The modifications and performance standards included in the proposal are not detrimental to the functions and values of critical area and critical area buffers off-site; and;**

   Finding: Per the critical areas report prepared by the Watershed Company, as a result of the removal of invasive vegetation within the wetland and buffer; and the replanting with native vegetation, the proposal will achieve a net gain in stormwater quality function. The project will be subject to the City's stormwater regulations.

4. **The resulting development is compatible with other uses and development in the same land use district.**

   Finding: The proposal is requested in order to construct a single-family home which is a compatible use with the adjacent single-family residences.

B. 20.30P.140 Critical Areas Land Use Permit Decision Criteria – Decision Criteria
The Director may approve, or approve with modifications an application for a Critical Areas Land Use Permit if:

1. **The proposal obtains all other permits required by the Land Use Code;**

   Finding: The submittal of a single family building permit is required and must be approved to construct the home. Plans submitted with the building permit must be in compliance with the conditions outlined in this decision. **See Conditions of Approval in Section X of this report.**

2. **The proposal utilizes to the maximum extent possible the best available construction, design and development techniques which result in the least impact on the critical area and critical area buffer;**

   Finding: The proposal is consistent with the required performance standards as discussed in Section III of this report. The proposed development activity has been limited to areas necessary to construct and gain access to a single family home. The resulting mitigation will remove existing invasive plants within the wetland and buffer. The area will be replanted with native vegetation along with disturbed structure setbacks adjacent to the proposed home.

3. **The proposal incorporates the performance standards of Part 20.25H to the maximum extent applicable, and;**

   Finding: As discussed in Section III of this report, the applicable performance standards are being met.

4. **The proposal will be served by adequate public facilities including street, fire protection, and utilities; and;**

   Finding: The proposed development is adequately served by existing public facilities.

5. **The proposal includes a mitigation or restoration plan consistent with the requirements of LUC Section 20.25H.210; and**

   Finding: A mitigation plan consistent with LUC 20.25H.210 has been submitted to remove invasive species within the wetland and buffer and replant with native vegetation. Disturbed structure setbacks will also be replanted with native vegetation. The project is required to be monitored for five years. The monitoring, maintenance, and reporting schedule will be as proposed in the mitigation plan. **See Conditions of Approval in Section X of this report.**

6. The proposal complies with other applicable requirements of this code.

Finding: The applicant submitted documentation consistent with the requirement to demonstrate compliance with the requirements of LUC 20.30P, and 20.25H. Staff has reviewed these documents and finds that the proposal complies with all other applicable requirements of the Land Use Code. **See Conditions of Approval in Section X of this report.**

IX. Conclusion and Decision

After conducting the various administrative reviews associated with this proposal, including Land Use Code consistency, SEPA, City Code and Standard compliance reviews, the Director of the Development Services Department does hereby approve with conditions the modification and disturbance of steep slope, wetland and stream structure setbacks to construct a single family home and associated driveway. As part of the mitigation plan, 7,600 square feet of invasive knotweed will be removed from the wetland and buffer and the area will be replanted with native vegetation. The mitigation will also include the planting of native vegetation within 1,184 square feet of the slope, stream, and wetland structure setbacks.

Approval of this Critical Areas Land Use Permit does not constitute a permit for construction. A building permit, clear and grade permit, and/or utility permit is required and all plans are subject to review for compliance with applicable City of Bellevue codes and standards.

Note- Expiration of Approval: In accordance with LUC 20.30P.150 a Critical Areas Land Use Permit automatically expires and is void if the applicant fails to file for a Building Permit or other necessary development permits within one year of the effective date of the approval.

X. Conditions of Approval

The applicant shall comply with all applicable Bellevue City Codes and Ordinances including but not limited to:

Applicable Ordinances	Contact Person
Clearing and Grading Code- BCC 23.76	Tom McFarlane, 425-7860
Land Use Code- BCC Title 20	Drew Folsom, 425-452-4441
Noise Control- BCC 9.18	Drew Folsom, 425-452-4441

The following conditions are imposed under the Bellevue City Code or SEPA authority referenced:

1. **Building Permit Required:** Approval of this Critical Areas Land Use Permit does not constitute an approval of a development permit. The submittal and approval of a single family building permit is required. Plans submitted as part of permit application shall be consistent with the plans, dated December 1, 2016, reviewed as part of this approval.

   Authority: Land Use Code 20.30P.140
   Reviewer: Drew Folsom, Development Services Department

2. **Temporary Erosion and Sedimentation Control Plan:** A temporary erosion and sedimentation control plan will be required as part of the building permit application, and shall address all requirements for restoring areas of temporary construction disturbance, as well as erosion and sedimentation best management practices.

   Authority: Bellevue City Code 23.76
   Reviewer: Tom McFarlane, Development Services Department

3. **Geotechnical Recommendations and Inspection:** The project geotechnical engineer shall provide monitoring and testing of earthwork construction to verify implementation of the recommended procedures and practices in the geotechnical report dated September 9, 2015, and prepared by Leroy Surveyors & Engineers, Inc. In particular, the geotechnical engineer must monitor and test construction of permanent cut and fill slopes and provide recommendations on final slope inclination and permanent slope protection. A report verifying implementation of monitoring, testing, and inspection shall be submitted to Drew Folsom at dfolsom@bellevuewa.gov or to the address below:

   Drew Folsom, Associate Planner
   Development Services Department
   City of Bellevue
   PO Box 90012
   Bellevue, WA 98009-9012

   Authority: Land Use Code 20.30P.140
   Reviewer: Drew Folsom, Development Services Department

4. **Pesticides, Insecticides, and Fertilizers:** The applicant must submit as part of the required single family building permit information regarding the use of pesticides, insecticides, and fertilizers in accordance with the City of Bellevue's "Environmental Best Management Practices".

   Authority: Land Use Code 20.25H.100
   Reviewer: Drew Folsom, Development Services Department

5. **Maintenance and Monitoring:** The proposed planting (Attachment 1) will need to be included in this plan. The maintenance and monitoring plan approved establishes a 5-year monitoring period with goals, objectives, and performance standards. An annual monitoring report is to be submitted by December 31 of each year with established photo points and transects. There should be 5 reports total; one after the first growing season. Reports shall comprise all of the elements stated on the monitoring plan found as Attachment 1. Reports are to be submitted to Drew Folsom at dfolsom@bellevuewa.gov or to the address below:

Drew Folsom, Associate Planner
Development Services Department
City of Bellevue
PO Box 90012
Bellevue, WA 98009-9012

Authority: Land Use Code 20.25H.220
Reviewer: Drew Folsom, Development Services Department

6. **Maintenance Device:** Prior to the final sign off of the building permit land use inspection the applicant shall submit a restoration/replanting maintenance plan cost estimate to be used in determining the amount of the assignment of the maintenance and monitoring financial security device that will be required prior to permit issuance. A complete assignment of savings financial security device in the amount determined by the project planner must be submitted prior to building permit or clearing and grading permit issuance. For the purpose of this permit, maintenance and monitoring shall be completed for a period of five growing seasons. Release of this assurance device is contingent upon receipt of documentation reporting successful establishment in compliance with the mitigation performance standards listed in the project mitigation plan included as Attachment 1. Land Use inspection of the planting after 5-years is required to release the surety.

   Authority: Land Use Code 20.25H.125.J; Land Use Code 20.25H.220
   Reviewer: Drew Folsom, Development Services Department

7. **Hold Harmless Agreement**
   The applicant shall submit a hold harmless agreement in a form approve by the City Attorney which releases the City from liability for any damage arising from the location of improvements within a critical area, buffer, or structure setback in accordance with LUC 20.30P.170. The hold harmless agreement is required to be recorded with King County prior to building permit issuance. Staff will provide the applicant with the hold harmless form.

   Authority: Land Use Code 20.30P.170
   Reviewer: Drew Folsom, Development Services Department

8. **Land Use Inspections:** Following installation of planting the applicant shall contact Land Use staff to inspect the planting area to begin the 5-year monitoring period. The maintenance surety is required prior to Land Use staff inspection. At the end of 5 years inspection by Land Use staff is required to release the maintenance surety. Staff will need to find that the plants are in a healthy and growing condition and the mitigation plan is successful per the established goals, objectives and performance standards in the monitoring plan. To schedule an inspection please call Drew Folsom at 425-452-4441.

   Authority: Land Use Code 20.30P.140
   Reviewer: Drew Folsom, Development Services Department

9. **Noise Control:** Noise related to construction is exempt from the provisions of BCC 9.18 between the hours of 7 am to 6 pm Monday through Friday and 9 am to 6 pm on Saturdays, except for Federal holidays and as further defined by the Bellevue City Code. Noise emanating from construction is prohibited on Sundays or legal holidays unless expanded hours of operation are specifically authorized in advance.

   Authority: Bellevue City Code 9.18
   Reviewer: Drew Folsom, Development Services Department